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EXAMINER

GARCIA, ERNESTO

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/669,805

Applicant(s)

HARRIS, SCOTT C.

Examiner

Ernesto Garcia

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,5,7,13-26 and 29 is/are pending in the application.
- 4a) Of the above claim(s) 7,23 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2,5,13-21,25,26 and 29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 August 2006 and 20 November 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in prior Office actions.

Restriction

Applicant's election of Group I, claims 2, 5, 13-22, and 25-29 in the reply filed on August 9, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 7, 23, and 24 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on August 9, 2006.

Drawings

The drawings were received on August 9, 2006 and November 20, 2006. These drawings are acceptable; however, the objections have not been addressed.

The drawings are objected to because reference characters for each box were omitted from Figure 1.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "520" as mentioned on page 15 in line 8.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: "808" shown in Fig. 4.

The drawings are objected to because box 310 should show the label for the Y-axis and X-axis to show bid versus time. The text "PROFILE BY" in box 320 in Figure 3 should be --GRAPH--. "More" in step "424" should be --Move-- to correspond with the disclosure. An under cursor is missing in between "MIN" and "BID" in box 610 of Figure 6A. The term "MODERATORS" in box 610 of Figure 6A should be --AGENTS-- since the agents are updated with the values of MIN_BID, WIN_BID and CURR_BID as describe in the specification in step 610. The text "INC" in unlabeled box following box 645 in Figure 6A should be --BID_INC-- to be consistent with the specification. Further, the empty boxes shown in Figure 5 make unclear what they are or what they represent. These empty boxes should be deleted.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

Replacement Drawing Sheets

Drawing changes must be made by presenting replacement sheets which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments section, or remarks, section of the amendment paper. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). A replacement sheet must include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figures are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and within the top margin.

Annotated Drawing Sheets

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheet(s) must be clearly labeled as "Annotated Sheet" and must be presented in the amendment or remarks section that explains the change(s) to the drawings.

Timing of Corrections

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the recitations "said quick bid only overcomes those bids which are known" recited in claim 14, line 3, "plurality of bids includes a plurality of bids, associated with times when those maximum bids can be made, and only those bids whose times have been reached are known" recited in claim 15, lines 1-3, "determining both secret bids and non-secret bids" recited in claim 16, line 2, "said action includes an extra fee beyond that which would be charged for only non-secret bids" recited in claim 17, and "said client allows sending a plurality of bids, to be executed at a plurality of times" recited in claim 20, lines 1-2, are not recited in the specification.

Applicant argues that "secret bids and non-secret bids are supported at the top of page 20" is described at page 20, line 10-11. The examiner disagrees since page 20, lines 10-11, recites

"For instance, users may get a discount or other incentive to allow the quick bid to be known".

Accordingly, this line does not mention secret bids or for that matter non-secret bids. It merely states that users get a discount or other incentive to allow the quick bid

to be known. Accordingly, the recitation "determining both secret bids and non-secret bids" lacks proper antecedent basis.

The amendment filed November 20, 2006 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: Figure 5 introduces new subject matter. In particular, the box identified "MY AGENT" has a branch labeled "STATISTICS 44 PEOPLE", which is different than that originally filed drawing. Note that Figure 5 originally stated "STATISTICS 46 PEOPLE". Accordingly, the number of people has changed. Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Objections

Claims 2, 13, 18, 22, and 26 are objected to because of the following informalities:

regarding claim 2, --the-- should be inserted before "information" in lines 7 and 9 as that is the same information recited in line 6, a comma should be inserted after "information" in line 7 and after "bids" in line 8;

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regarding claim 13, applicant should consider rewriting the claim as the capabilities of the first computer do not define any positive steps and the claim does not set forth all steps as common practice; and,

regarding claim 18, "running" in line 2 should be --able to run--, and "accepts" in line 3 should be --able to accept--, and "enabling and sending" in line 4 should be --able to enable and send-- as the claim is not a living claim;

regarding claim 22, --a-- in line 2 should be --the--, "amount" in line 3 should be --amounts--, and "an" in line 4 should be --the--;

regarding claim 25, "a user" in line 12 should be --the user-- recited in line 7; and "second" in lines 11 and 12 should be --other-- as "second computer" lacks proper antecedent basis; and,

regarding claim 26, "second" in line 2 should be --other--, and --current-- needs to be inserted before "maximum". Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 29 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which

was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claim 29, the recitation "said icon allows said bid to be placed using a single click" is not supported by the original filed specification. The drawings, in particular, Figure 7A and 7B, suggests two clicks one to click either the quick bid or quick win bid icon and the other to confirm as shown by the Y/N choice that follows. Accordingly, there is no support for the icon allowing a bid to be placed using a single click. Even the paragraph starting on page 20 supplements the examiner's analysis that a confirmation follows. Accordingly, the subject matter of claim 29 does not comply with the written description.

Claims 2, 5, 13-17, 21, 22, 25, 26, and 29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention.

Regarding claim 2, it is unclear how to enable the use of the method. In particular, how does the amount required to overcome any current bids, i.e., the information, utilized to determine whether an entered bid by a user is higher than a

current bid without the user viewing the amount required. Let's say that the current bid is \$1.00 and the amount required to overcome any current bid is \$1.01, i.e., the information that is unknown to the user, and say, an entered bid of \$1.75 (remember the user doesn't know that the amount to overcome the current bid is \$1.01 and so the bidder bets \$1.75. So how does the secret \$1.01 amount, i.e., the information, utilized to determine whether \$1.75 is higher than the current bid of \$1.00? Now, if the scenario is changed to \$5.00 instead of \$1.01 for the amount to overcome the current bid of \$1.00 and kept unseen by the user, and the same entered bid of \$1.75 is entered. How does the \$5.00, i.e., the information indicative of the amount that will be required to overcome the current bid of \$1.00 determine whether 1.75 is higher than the current bid of \$1.00? In addition, how can the method be practiced without ever contacting the first computer? Does the second computer ever contact the first computer? What tangible result is there when the second computer is not contacted? Apparently, the bid cannot be placed and nothing is bought to allow the transfer of products or services of an actual auction.

Applicant argues that "the question about how five dollars can determine whether \$1.75 is higher than the current bid seems to ignore the exact words of the claim". In response, it is unclear by the applicant what words are being ignored. The examiner is merely equating the language in mathematical form and cannot determine how the information alone, i.e., the \$5.00 dollars, which is an amount required to overcome the current bid of \$1.00, is being utilized to allow local determination. It seems that both the

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information and the current bid are utilized instead and not just the information as claimed to determine whether the entered bid is higher than the current bid. If the information is utilized alone as claimed, then the claim fails to set forth how the information is manipulated.

Regarding claim 13, "the limitation "displaying a current winning amount, which is an amount that exceeds all the other bids on the item, but which may be less than, or the same as, said highest bid" in line 8-10 does not allow one to properly use the invention. Logically, in order for the current winning amount to exceed the highest bid, the current winning amount has to be greater than the highest bid. So how can the current winning amount be less than or the same as the highest bid? If the current winning amount is less than or equal to the highest bid, apparently it is not a current winning amount and so the bid cannot be displayed.

Applicant remarks that proxy bidding in ebay™ allows a user to win the current winning amount of a dollar, but the current highest bid is five dollars. In response, it should be noted that the five dollars has not been entered as a bid and thus the five dollars is merely a maximum amount allowed to be bid by a proxy user and not that the five dollars is present as the highest bid.

Regarding claim 25, the limitation "which allows a bid to be placed without contacting said first computer" in lines 8-10 does not enable one using the system to

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place a bid. How does the other computer place a bid without contacting the first computer hosting the auction? If the first computer does not receive an amount to bid, then logically no bid exists. Common sense will establish that for a bid to be a bid the first computer has to receive the amount being bided, otherwise it is not a bid. Even in personal auctions, a bidder has to orally contact the auctioneer to place a bid otherwise, the bidder is not placing a bid. This same limitation in conjunction with "from at least one other computer, connected to said first computer" recited in lines 4-5, indicates that the first computer contacts the other computer all the time. Accordingly, how do these steps enable one to practice the invention while the first computer is connected to the other computer or vice versa and yet without contacting the first computer.

Applicant has remarked that claim 25 has been amended to include the limitations of claim 28 to clarify that the bid is placed without contacting the first computer. In response, the examiner does not see how the limitation "determining whether an entered bid is higher than said secret maximum bid amount, and informing a user at said second computer without contacting said first computer" solves the issue of "allowing a bid to be placed without contacting said first computer". Again, how does one place a bid without contacting the first computer? Is this some imaginary bidding that is not placed with the second computer? Note that the method has to provide a useful result otherwise the method does not meet the requirement of "tangible result" because the transfer of a product or service does not occur in the auction.

Applicant argues that “the limitation recites what the computer is capable of doing. It is capable of allowing a bid to be placed”. In response, it is the capability that is questioned. In particular, how does the computer allow a bid to be placed without ever contacting the first computer. As explained above, logically an entered amount in some box displayed in the second computer is not a bid until it placed in the first computer.

Regarding claims 5 and 22, the claims depend from claim 2 and therefore do not enable one to use the invention.

Regarding claims 14-17 and 21, the claims depend from claim 25 and therefore do not enable one to use the invention.

Regarding claims 26 and 29, the claims depend from claim 25 and therefore do not enable one to use the invention.

Claims 2, 5, 22, and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 2, the limitation “allowing placing bids ... from a second computer” in line 4-5 does not limit the method as no bid has been positively placed.

The limitation only recites what a second computer is capable of performing but not positively required. A positive suggested recitation would be --placing at least one bid ... from a second computer--.

Regarding claim 5, the limitation "keeps the amount of the bids secret until a time of day and date" makes uncertain whether the user really knows the current bid and further how can you keep an entered bid secret by the user when the user already entered that amount for the bid. Further, the limitation "the bid" in line 4 makes unclear whether that is the current bid or the entered bid.

Regarding claim 13, for users to be able to bid, a second computer must be recited otherwise the method cannot be practiced with just one computer. The limitation "a current winning amount, which is an amount that exceeds all the other bids, but which may be less than, or the same as, said highest bid, depending on a relationship between said highest bid and said all the other bids" in lines 8-10 makes uncertain what the current winning amount is. Lines 8 states that the current winning amount exceeds all the other bids, i.e., the highest bid and the amount that exceeds the highest bid. However, this statement contradicts line 9 as now the current winning amount may be less than, or the same as the highest bid. Therefore, it makes uncertain what exactly is the highest bid. Is it the current winning amount the highest bid, or the amount that exceeds all other bids. Further, "the relationship" is unclear and has not been defined. The recitation "the other bids" in lines 8-9 lacks proper antecedent basis.

Moreover, a third computer is required for the "one other of the plurality of users can bid an amount that exceeds said highest bid" as required in line 7 otherwise, that user cannot place a highest bid. Further, the limitation "enabling a quick bid" in line 14 does not limit the method as a quick bid has not been positively placed.

Regarding claim 14, the limitation "bids, some of which are known and other which are secret" makes unclear to whom the bids are known or unknown.

Regarding claim 16, how does one determine secret bids when information is kept secret. Applicant argues that the disclosure describes that the information is kept secret in the first computer and not shown to the user. In response, the examiner is not questioning whether the information is secret but rather how secret bids are determined when the information is kept secret from the first computer hosting the auction and the information is not shown to the user. If the information is kept secret from the first computer, then the first computer does not have the information at all. Further, if the information is not shown to the user and no computer has been recited, then how does the method enable "an action which allows determining both secret bids and non-secret bids"? The user cannot possibly do this action since the user does not see the information. It is unclear what secret bids are.

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Regarding claims 15 and 17 and 21, the claims depend from claim 13 and therefore are indefinite.

Regarding claim 22, the limitation "the server" in line 2 makes unclear whether the server is one of the computers recited in claim 2 or a different component. For purposes of examination, the examiner has considered the server to be the first computer. The limitation "said values" in line 4 lacks antecedent basis and it is unknown what those values are.

Regarding claim 25, the limitation "a current maximum bid which has been placed" makes unclear who has placed the current maximum bid. Did the user of the other computer place the maximum bid?

Claim Rejections - 35 USC § 102

Claims 2, 5, 22, 25, and 26 are rejected under 35 U.S.C. 102(b) as being unpatentable over eBay's "Proxy Bidding".

At the outset, it should be noted that in method claims, it is the patentability of the method steps that is to be determined and not the recited information on the databases. Information on database not affected in the manipulation sense is given no patentable weight.

Regarding claim 2, as best understood, eBay discloses a method comprising:
hosting an internet auction on a first computer connected to the internet;
placing bids from a second computer; and,
storing information on the second computer about an amount required to
overcome any current bid. Applicant is reminded that information that eBay sends to
the second computer is cached at the second computer, including any amount required
to overcome any current bid. Any information cached is stored locally at the second
computer.

Regarding claim 5, eBay's NPL discloses the step of placing the bids comprising
providing bids to an agent program. Applicant is reminded that all auctions hosted on
the internet have an agent program so bids can be placed from the second computer.

Regarding claim 22, the method further comprises
storing maximum bid amounts on the first computer (eBay inherently stores
maximum bids); and,

displaying the current bid without displaying the maximum bid amounts.
Applicant should review the eBay Auction Stats box as no maximum bid amounts are
displayed but only minimum bid amounts.

Regarding claim 25, eBay's NPL discloses a method comprising:

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hosting an Internet auction on a first computer (ebay's server);

accepting bids from at least one other computer connected to the first computer (the bidder's computer);

displaying a current price for an item on the other computer (obviously the bidder sees the current bidding price);

keeping secret a current maximum bid placed from other users (Joe's elf has a maximum allowed bid unknown to Jenney or You);

displaying an icon on the other computer (the bid icon or submit bid icon) which allows a bid to be placed;

determining, in the other computer, whether an entered bid is higher than the current maximum bid that is kept secret (the script determines whether is high and either runs in the server or the bidders machine); and

informing the user at the other computer without contacting the first computer (computers have help files in them which do not need to be retrieved from other computers to inform the user).

Applicant is reminded that the magical elf on eBay's NPL keeps secret Joe's maximum bid of \$8.00. When the \$8.00 becomes the current maximum bid, Jenny or You do not know that the \$8.00 was the maximum for Joe. The \$8.00 will be kept secret even when \$8.00 is the current maximum bid. Therefore, the step of keeping secret the \$8.00, when it becomes the current maximum bid, is performed. In regards to displaying the icon, all programs running an internet auction display icons. Applicant

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should note that any bid placed will inherently has to be higher than the current maximum bid.

Regarding claim 26, the method further comprises:

running an applet on the second computer; and,

determining whether the placed bid is higher than the current maximum bid.

Applicant is reminded that an applet (a software on the other computer) determines whether the entered bid is higher than the current maximum bid. The software checks whether applicant has entered a value with an increment of \$0.25 or not before sending the bid.

Claim Rejections - 35 USC § 103

Claims 13-17, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over eBay's "Proxy Bidding", and further in view of Hartman et al., 5,960,411.

Regarding claim 13, as best understood, eBay's NPL discloses a method of automated auction bidding comprising steps of :

hosting an auction on a first computer connected to an Internet;

placing a highest bid from one user from a second computer;

placing a bid exceeding the highest bid from another user from a third computer;

displaying a current winning amount in the first computer;

exceeding the highest bid and the bid exceeding the highest bid with the current winning amount;

not displaying the highest bid by the first computer;

not displaying a minimum bid amount required to exceed the highest bid; and,

enabling a quick bid whereby a user can automatically bid an amount which exceeds the highest bid (the elves do this for you);

Applicant should note that eBay's NPL has Joe bidder showing a maximum of \$8.00 as the highest bid and Your bidder elf will place a bid higher than Joe's \$8.25. The first computer will display the \$8.25 as the current winning amount. Apparently, once the current winning amount is displayed, the highest bid (that of Joe) will not be displayed anymore. Further, even though eBay's NPL shows a minimum bid amount in the eBay Auction stats, it would be obvious not to show the minimum bid amount exceeding the highest bid (\$8.00) when rules are not used.

However, eBay does not disclose the step of "enabling the quick bid exceeding the highest bid with a single click" since it is unknown how many clicks are required to enable the quick bidding.

Hartman et al. teach a single click for placing an order, which is well known in the art (see e.g. column 2, lines 55-60 and column 3, lines 30-67). Hartman et al. employ the single click action within the context of placing an order over a communication network, which is analogous to, if not exactly the same as, submitting a bid over the

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internet in the context of an auction setting. The single click action of Hartman et al. is made possible by way of previous entry of user identification information and assignment of a unique identifier to that user so that future submissions require only minimal effort (i.e. a single click) and prevent redundant transmission of sensitive information over the network. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to enable the quick bidding via the action of a single click as taught by Hartman in order to speed up the process of placing bids.

Regarding claim 14, the method inherently discloses the step of overcoming those bids which are known with the quick bid.

Regarding claim 15, these claims do not recite any method steps to further limit the method. Accordingly, the bids are associated with times when those maximum bids can be made. Only those bids whose times have been reached are known.

Regarding claim 16, eBay's NPL determines secret bids and non-secret bids.

Regarding claim 17, these claims do not recite any method steps to further limit the method. Accordingly, the action includes an extra fee beyond that which would be charged for only non-secret bids.

Regarding claim 21, the method further includes displaying the quick bid responsive to a specified action by the user. Applicant should note that clicking the mouse by the user is a specified action.

Claims 18-20 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over eBay's "Proxy Bidding", as applied to claim 25 below, and further in view of Hartman et al., 5,960,411.

Regarding claims 18-20, given the method of claim 29 below, the system inherently is used.

Therefore, regarding claim 18, the system comprises a server, a client, and a program. The program is able to display information about an auctioned item, accept bids on the item and keep track of a maximum bid. Given, the modification above, the client is able to send a bid to the server with a single click including an amount of the bid.

Regarding claim 19, the server automatically updates at least one screen being seen on at least one client to automatically show new bid amounts.

Regarding claim 20, the client is able to send bids to be executed at a plurality of times.

Regarding claim 29, eBay's NPL, as discussed above, does not explicitly include the step of sending the bid to said server with a single click. Hartman et al. teach that single click order placing is well known in the art (see e.g. column 2, lines 55-60 and column 3, lines 30-67). Hartman et al. employ the single click action within the context of placing an order over a communications network which is analogous to, if not exactly the same as, submitting a bid over the internet in the context of an auction setting. The single click action of Hartman et al. is made possible by way of previous entry of user identification information and assignment of a unique identifier to that user so that future submissions require ; only minimal effort (i.e. a single click) and prevent redundant transmission of sensitive information over the network. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the ability to submit a bid via the action of a single click as taught by Hartman in order to speed up the process of placing bids.

Response to Arguments

Applicant's arguments filed August 9, 2006 have been fully considered but they are not persuasive.

With respect to claim 2 and 25, applicant argues that "the patent Office is not entitled to ignore any claim limitation, where it is the method steps or the information in the database". In response, the examiner is not ignoring any limitations in particular the

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method steps recited. With respect to the information in the database, it should be noted that the rejected claims do not recite any database or for that matter information in a database. Applicant then argues that ebay™ does not currently store that kind of information, i.e., information about an amount that will be required to overcome any current bids on the item. In response, it should be noted that the rejected claims do not state “storing, on a first computer, information about an amount that will be required to overcome any current bids on the item. Note that claim 1 requires the second computer to store and not the first computer hosting the auctioning in this instance ebay™.

With respect to claim 5, applicant argues that the rejection completely ignores the limitation of time of day and date. In response, the examiner is not ignoring any limitation but rather indicates that this claim does not recite any method steps that further limit the method. Exactly what step is being ignored when none has been recited. The response to the argument also applies to claim 22.

With respect to claim 25, applicant argues that ebay™ does not currently store secret information and has not way of determining whether an entered bid is higher than the secret maximum bid. In response, it should be noted that none of the steps in claim 25 recite “storing secret information on said first computer”. With respect to determining the higher bid, it should be noted that claim 25 does not recite any “secret maximum bid” but rather “a maximum amount that the user is willing to pay” (line 6). Therefore, the argument is not commensurate with the scope of the claimed invention.

With respect to claims 13-17 and 21, applicant argues that eBay™ does not teach or suggest a quick bid nor does Hartmann teach a system of quick auction win. In response, it should be noted that ebay™ is founded on a bidder entering an amount and clicking an icon to send the bid. This all depends how swift a person is in inputting the bid and clicking "Bid". With respect to the quick auction win, note that none of the claims 13-17 and 21 mention anything about "quick auction win". Claim 13 merely recites enabling a quick bid whereby a user can automatically bid an amount, which will exceed the highest bid. This is clearly anticipated by the proxy bidding in ebay™ when two elves go at war in bidding. The second elf will automatically outbid the first elf. The second elf will exceed the highest bid, which represents a maximum amount that the first elf is willing to pay. See the document of "Proxy Bidding". Applicant further argues that claim 13 recites features, which are specific to an auction. In response, the Proxy Bidding has met this concept. Applicant further argues that claim 13 would not be used in a one-click order scenario since in a one-click order scenario there is an established exact price. In response, this is not different. Outbidding a current bid of \$1.00 with \$1.01 is a one-click order scenario since \$1.01 is an exact price established by ebay™. The fact that it is in increments, does not refute that it is still an established price. If a user is willing to pay the current established price, one will click and purchase. Note that a bid is a purchase. Applicant remarks that in a one-click auction, it requires actually determining the price using ending the auction. In response, none of the

rejected claims mentions anything about "determining a price using ending the auction", which it is unclear to the examiner.

Applicant remarks that a one-click end to an auction is quite simple antithetical to any established conventional teaching in the art. In response, applicant should note that the rejected claims do not mention anything about ending an auction with a one-click. Claim 13 clearly merely states that enabling a quick bid is performed by a single click not that it ends the auction. Further, isn't auctioning finding the highest bidder? If applicant's invention is concerned with finding the lowest bidder, wouldn't one simply bet \$0.00 and win. Isn't this considered getting the item for free?

With respect to claim 17, applicant argues that the statement that the claim does not recite any method steps is contrary to the law which requires that the patent Office consider all elements of the claim and that the Office has ignored this element. In response, elements are only to be considered in article claims, which claim 17 is not. Note that patentability of method claims is based on recited steps and not on structure, i.e., elements. Claim 17 does not have a step of "charging an extra fee" and therefore is not required. If applicant is anticipating a step of charging, applicant needs to amend the claim to reflect this step.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. In particular, the new limitation "in said second computer ...without contacting said first computer" in claim 25, lines 11-13, changes the scope of claim 26 and 29 and thus necessitated the new ground of rejection to claim 29. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 571-272-7083. The examiner can normally be reached from 9:30AM-6:00PM. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

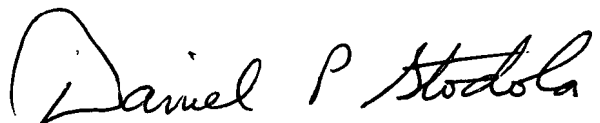
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached at 571-272-7087.

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E.G.

May 10, 2007



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